

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Circuit Mediation Office
 Phone (415) 355-7900 Fax (415) 355-8566
<http://www.ca9.uscourts.gov/mediation>

MEDIATION QUESTIONNAIRE

The purpose of this questionnaire is to help the court's mediators provide the best possible mediation service in this case; it serves no other function. Responses to this questionnaire are **not** confidential. Appellants/Petitioners must electronically file this document within 7 days of the docketing of the case. 9th Cir. R. 3-4 and 15-2. Appellees/Respondents may file the questionnaire, but are not required to do so.

9th Circuit Case Number(s):	<input style="width: 90%;" type="text" value="17-16161"/>		
District Court/Agency Case Number(s):	<input style="width: 90%;" type="text" value="5:08-CV-05780 LHK"/>		
District Court/Agency Location:	<input style="width: 90%;" type="text" value="Northern District of California, San Jose Division"/>		
Case Name:	<input style="width: 30%;" type="text" value="Facebook, Inc."/>	v.	<input style="width: 30%;" type="text" value="Power Ventures, Inc., et al."/>
If District Court, docket entry number(s) of order(s) appealed from:	<input style="width: 90%;" type="text" value="435, 437"/>		
Name of party/parties submitting this form:	<input style="width: 90%;" type="text" value="Defendants-Appellants POWER VENTURES, INC. and STEVEN VACHANI"/>		

Please briefly describe the dispute that gave rise to this lawsuit.

Power Ventures, Inc. owned a social media aggregation website (www.power.com) that enabled users to log into and manage their social media accounts from a single website/account. In Dec. 2008, Power.com launched its Facebook integration with a promotion where users who signed up 100 friends received \$100. Users could invite their friends by creating a Facebook event page and sending it to their friends on Facebook. Facebook, Inc. discovered this promotion and promptly demanded Power cease operations. Power immediately responded and requested permission to continue operation while integrating the Facebook-approved "Facebook Connect" API, and the parties negotiated terms for continued operation over the next few weeks. Despite ongoing good faith negotiations, no evidence of damage or threat to Facebook, and Power's prompt efforts to comply with Facebook's API, Facebook filed this lawsuit in Dec. 2008. Ultimately, Facebook claimed violations of the CAN-SPAM Act, CFAA and CPC § 502 and requested compensatory damages and for maximum statutory damages based on emails sent through Facebook when users invited their friends to join Power.com.

Briefly describe the result below and the main issues on appeal:

On February 16, 2012, summary judgment was granted to Facebook on all claims, and summary judgment was denied as to defendants. On September 25, 2013, the Court ordered damages totalling \$3,031,350 plus compensatory damages and found Vachani liable. Further, the Court granted Facebook's request for a permanent injunction against defendants. Defendants appealed the District Court judgment. On Dec. 9, 2016, the Ninth Circuit entered its order reversing the CAN-SPAM judgment, sustaining the CFAA and CPC § 502 judgments, vacating the entire damages award and permanent injunction, and issuing a mandate to the lower court to re-assess damages and injunctive relief in light of the Ninth Circuit's CAN-SPAM reversal and specific findings narrowing the CFAA and CPC § 502 claims. The parties re-briefed the District Court on the issue of damages within further limitations imposed by the District Court, and on May 2, 2017 the District Court issued an order on damages regarding the CFAA and CPC § 502 claims, as well as a permanent injunction.

The primary issues now on appeal include: (1) the District Court declined to reassess damages and injunctive relief within the directive of the Ninth Circuit's mandate; (2) the District Court's damages assessment relies entirely on disputed facts, namely evidence of Plaintiff's damages that fails to include any accounting and is suspect, in multiple facets, on its face and does not

comport with the Ninth Circuit's mandate; and (3) the permanent injunction is overly broad, arbitrarily discriminatory, and prohibits otherwise lawful and non-injurious activity.

Describe any proceedings remaining below or any related proceedings in other tribunals.

The defendants-appellants, Power Ventures, Inc. and Steven Vachani, filed a Petition for Writ of Certiorari, which is presently pending in the U.S. Supreme Court.

Provide any other thoughts you would like to bring to the attention of the mediator.

Any party may provide additional information ***in confidence*** directly to the Circuit Mediation Office at ca09_mediation@ca9.uscourts.gov. Please provide the case name and Ninth Circuit case number in your message. Additional information might include interest in including this case in the mediation program, the case's settlement history, issues beyond the litigation that the parties might address in a settlement context, or future events that might affect the parties' willingness or ability to mediate the case.

CERTIFICATION OF COUNSEL

I certify that:

a current service list with telephone and fax numbers and email addresses is attached

☒ (see 9th Circuit Rule 3-2).

I understand that failure to provide the Court with a completed form and service list

☒ may result in sanctions, including dismissal of the appeal.

Signature

("s/" plus attorney name may be used in lieu of a manual signature on electronically-filed documents.)

Counsel for

Note: Use of the Appellate ECF system is mandatory for all attorneys filing in this Court, unless they are granted an exemption from using the system. **To file this form electronically** in Appellate ECF, complete the form, and then print the filled-in form to PDF (File > Print > PDF Printer/Creator). Then log into Appellate ECF and choose Forms/Notices/Disclosure > File a Mediation Questionnaire.

Amy Sommer Anderson #282634
AROPLEX LAW
156 2nd Street, Floor 1
San Francisco, CA 94105
Phone: 415-529-5148
Facsimile: 415-970-5016
Email: Anderson@aroplex.com

Attorney for Defendant-Appellant,
POWER VENTURES, INC.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FACEBOOK, INC.,

Plaintiff-Appelle,

v.

POWER VENTURES, INC. and STEVEN
VACHANI,

Defendants-Appellants.

Appeal No. 17-16161
District Ct. No. 5:08-CV-05780 LHK
District Judge: Lucy H. Koh

REPRESENTATION STATEMENT
(Fed. R. App. P. 12(b))

1. Defendant-Appellant POWER VENTURES, INC. is represented by:

Amy Sommer Anderson
AROPLEX LAW
156 2nd Street
San Francisco, California 94105
Email: anderson@aroplex.com
Telephone: 415-529-5148
Facsimile: 415-970-5016

2. Defendant-Appellant STEVEN VACHANI is a *pro se* appellant:

Steven Suraj Vachani
2425-B Channing Way, #216
Berkeley, CA 94704
Email: vachani@yahoo.com

3. Plaintiff-Appellee FACEBOOK, INC. is represent by:

Indra Neel Chatterjee
Orrick Herrington & Sutcliffe, LLP

1 1000 Marsh Road
2 Menlo Park, CA 94025-1015
3 Phone: 650-614-7400
4 Email: nchatterjee@orrick.com

5 Monte M. F. Cooper
6 Orrick Herrington & Sutcliffe, LLP
7 1000 Marsh Road
8 Menlo Park, CA 94025-1015
9 Phone: 650-614-7400
10 Email: mcooper@orrick.com

11 Joseph P. Cutler, Attorney
12 Perkins Coie LLP
13 1201 Third Avenue, Suite 4800
14 Seattle, WA 98101
15 Phone: 206-359-6104
16 Email: JCutler@perkinscoie.com

17 Theresa Ann Sutton, Esquire, Attorney
18 Orrick Herrington & Sutcliffe, LLP
19 1000 Marsh Road
20 Menlo Park, CA 94025-1015
21 Phone: 650-614-7400

22 Robert L. Uriarte
23 Orrick Herrington & Sutcliffe, LLP
24 1000 Marsh Road
25 Menlo Park, CA 94025-1015
26 Phone: 650-614-7400
27 Email: ruriarte@orrick.com

28 DATED: 6/16/2017

Respectfully submitted,

By: /s/ Amy Sommer Anderson
Amy Sommer Anderson
Attorney for Defendant,
POWER VENTURES, INC.

9th Circuit Case Number(s)

17-16161

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > *PDF Printer/Creator*).

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) .

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format)

s/ Amy Sommer Anderson

CERTIFICATE OF SERVICE

When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) .

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Signature (use "s/" format)